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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

BRIAN TANABE, Plaintiff and Respondent, v. ELIAS GEORGOPOULOS, Defendant and Appellant.	A132120 (San Francisco Super. Ct. No. CHH-11-571932)

Appellant Elias Georgopoulos appeals from a restraining order to stop harassment issued in favor of respondent Brian Tanabe. We affirm the order, and also hold that Tanabe is entitled to attorney fees incurred to defend against this appeal—an appeal that manifests complete disregard for settled principles of appellate review.

BACKGROUND

The Requests

On March 8, 2011, acting in propria persona, Tanabe filed a "Request for Orders to Stop Harassment" (Request), seeking an injunction against Georgopoulos. Tanabe's Request identified Georgopoulos as a "parking control supervisor—we are coworkers." In fact, Tanabe worked as a parking control officer at the San Francisco Municipal Transport Agency (SFMTA); and as Georgopoulos's brief describes it, Georgopoulos is a "supervisor at the [San Francisco] Department of Parking and Traffic Enforcement Division," and he and Tanabe "currently . . . work at the same job site."

The Request described the "most recent harassment" as occurring on March 7, 2011; that it was committed in the presence of two officers of the SFMTA; and that

Georgopoulos committed an act of violence, which Tanabe described as "block my escape route and push my body." The Request went on to allege that Georgopoulos "has been harassing [Tanabe] from 4-5-04, 12-1-05, 10-10-07, and 10-1-10." The Request asked for personal conduct and stay-away orders. And in the section entitled "Others to be Protected," Tanabe checked "yes," going on to state that Georgopoulos "has a gun, he knows where I live and I'm afraid he might to go my house when my wife and sons are home alone." All this was declared to be true under penalty of perjury.

The papers supporting Tanabe's Request included three pages of attachments. The first was a memorandum from Tanabe complaining about a "Georgopoulos threat," apparently on an earlier occasion, though the copy of this memorandum in the appellant's appendix is essentially illegible. The other two pages were a typed memorandum prepared by Tanabe dated March 7, 2011 and addressed to "James Lee AD Parking and Traffic," which provides in its entirety as follows:

"On March 7, 2011 I was subpoena [*sic*] to testify at a deposition in a civil action at the Office of the City Attorney. At 1390 Market St. 12:00 p.m. Civil Action No. C09-01778 MHP. Of AMJAD ABUDIAB vs CITY AND COUNTY OF SAN FRANCISCO, ELIAS GEORGOPOULOS; ANTONIO PARA AND . . .

"When I arrived at the deposition to give my complete statement in room 227 the City Attorney walked in the room with Elias Georgopoulos behind him. When the deposition began the city attorney asked some questions. I asked that Elias Georgopoulos leave the room on possibility of some kind of retaliation. The City Attorney refused to have Elias Georgopoulos leave the room.

"Again I stated that my statements might have some kind of fearful retaliation upon myself or family members. Again the city attorney refused my request to have Elias Georgopoulos leave the room. I then explained that I could not give a statement on the possibily [*sic*] of retaliation. Joseph May the attorney for Amjad Abudiab advised the city attorney's [*sic*] that if I was fearful in what I say this deposition should be stop [*sic*] on the grounds of Rule 30.

"I then left the room approximentely [*sic*] 12:50 p.m.

"At approximentely [*sic*] 1905 hours I was at Department of Parking and Traffic, 505 7th street in the mens [*sic*] locker room at my locker when Elias Georgopoulos walked in from the combination lock door on 7th street side. He was in his civilian clothes since he was not on duty. He walk [*sic*] pass me to used [*sic*] the restroom. Then he walked pass me to the door and went outside.

"At approximentely [*sic*] 1908 hours I walked out of the door. Not knowing Elias Georgopoulos would still be there. I walked out side and then Elias Georgopoulos started to say "YOU PUNK ASS MOTHER FUCKER. QUIT YOUR SMILING PUNK ASS. YEA YOU PUNK ASS FUCKER." I turn around and said "are you talking to me?" I was approximent [*sic*] six feet away. Knowing to keep a safe distance between us. He stated "YEA YOU PUNK ASS FUCKER. COME ON PUNK ASS. I'M NOT WORKING I'M IN CIVILIAN CLOTHES.["] At this time he lunged at me and stood approximentely [*sic*] 4" directly in front of my face and body. He then said "YEA WHAT DO YOU WANT TO DO PUNK ASS." At this time two pcos got between us F18 & H12. I said "your breath stinks." I then took a step back and Elias Georgopoulos took a step forward. As I turn [*sic*] around to my left to leave because the other pcos asked me to. The two other pco tried to hold Elias Georgopoulos away. Elias Georgopoulos went around the pco to his right and then assaulted me. He ran into my chest on my left side with his chest extended out and said "COME ON WHAT DO YOU WANT TO DO? YOU PUNK ASS."

"At this time I felt my life was in danger. So I dial 911. I explain what breifly [*sic*] happen that I was assaulted by Elias Georgopoulos. Who was a supervisor of parking and traffic and that I was a parking control officer.

"At this time Monica Georgopoulos got out of the Blue Toyota Corolla 4 Door and told Elias Georgopoulos "let's go." He then got in the driver side front door and drove away. He made a right turn from 505 7th St to eastbound Bryant Street. At this time my call went to SFPD DISPATCH. The SFPD dispatcher told me to stay there. That a police unit would respond, two officers responded at approximentely [*sic*] 1955 hours I left 505 7th Street.

"CASE NUMBER 110194676

"Company B (southern)

"415 553-1373

"Officer Vallapino Star 1709."

On March 11, 2011, also acting in propria persona, Georgopoulos filed his own Request. It, too, referred to March 7 as the most recent harassment, and represented that the people present were Monica Georgopoulos, Marcellus Joseph, and LaShea Russell. Georgopoulos described the acts or threats as follows: "He approached me in an aggressive manner and yelled 'You wanna go! You wanna go! Let's do this now.' " Georgopoulos checked "Yes," that Tanabe did engage in a course of conduct: that Tanabe "has falsely claimed that I threatened him in the past & continues to provoke me with comments such as 'bitch' while I pass him. I feel in fear for my safety."

On March 22, now represented by counsel, Georgopoulos filed his answer to Tanabe's Request. It denied the allegations in the Request, including denying that he owned a gun. And in paragraph 11 Georgopoulos represented as follows: "The court should not make an order against me because: Defendant denies all allegations in Plaintiff Tanabe's Request for Orders to Stop Harassment. Plaintiff Tanabe was the aggressor in the incident and was and has been trying to instigate an altercation in retaliation for disciplinary actions I took against him, as his supervisor, at work. Accordingly, I have filed a cross Request for Orders to Stop Harassment, CCH-11-571946 against Plaintiff Tanabe. [¶] See also attached Declarations of Elias Georgopoulos, Monica Georgopoulos, Marcellus Joseph and LaShea Russell," which declarations were apparently filed that same day.

In short, the Requests involved competing versions of the same incident.

On March 23, 2011, the matter came on for hearing before the Honorable Ellen Chaitin. Tanabe appeared in propria persona; Georgopoulos was represented by counsel, Jim Quadra. Before turning to a discussion of what occurred at that hearing, we digress briefly to set out the governing law, all set forth in Code of Civil Procedure section 527.6.

The Applicable Law

Section 527.6 begins as follows:

"(a)(1) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section. [¶] . . . [¶]

"(b) For the purposes of this section:

"(1) 'Course of conduct' is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose . . . .

"(2) 'Credible threat of violence' is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

"(3) 'Harassment' is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. [¶] . . . [¶]

"(7) 'Unlawful violence' is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others."

These, then were the statutory provisions to be applied by Judge Chaitin in making her ruling, which ruling may be based on affidavits or declarations, as well as oral testimony. (*Duronslet v. Kamps* (2012) 203 Cal.App.4th 717, 728; *Schraer v. Berkeley Property Owners' Assn.* (1989) 207 Cal.App.3d 719, 733, fn. 6; see generally 6 Witkin, Cal. Procedure (5th ed. 2008) Provisional Remedies, § 322, p. 262.)

The Hearing

The hearing began with Judge Chaitin noting that "both parties appear to have witnesses with them," all of whom had been sworn. Tanabe's witnesses were identified

as Marcus Tjon, Chris Nichel, and Vidalina Pubill. The one witness identified as with Georgopoulos was Monica Georgopoulos, his fiancée (and former spouse).

Judge Chaitin first confirmed that she had read Tanabe's papers. Then, in response to her question, Tanabe confirmed that everything stated in them was true and correct.

Tanabe then presented Judge Chaitin other papers that are not identified in the record. Judge Chaitin instructed Tanabe to give these papers to the bailiff to give to Georgopoulos's counsel, and then "bring them to the court so I can review" them. Tanabe responded that "[t]hese are statements because of other restraining orders he filed against me." The papers were provided to Judge Chaitin, at which point the record reflects a "brief pause," as she apparently reviewed the papers.

Judge Chaitin then heard from witnesses Nichel, Pubill, and Tjon. Their testimony, in conjunction with Tanabe's submissions, revealed the following facts and history:

The events on March 7 began when Tanabe had been subpoenaed to give a deposition in the case of *Abudiab v. City and County of San Francisco* (N.D. Cal. April 4, 2012, No. 09-CV-01778) [2012 LEXIS 47962], a case described by Georgopoulos as a "work related lawsuit brought against Mr. Georgopoulos and the City and County of San Francisco." Tanabe was too afraid to say anything in Georgopoulos's presence, and asked Georgopoulos to "leave the room on possibility of some kind of retaliation." Defense counsel at the deposition refused this request, at which point plaintiff's counsel moved that the deposition be terminated on account of Tanabe's fear of retaliation.

As Tanabe left work at SFMTA on the evening of March 7, Georgopoulos began shouting obscenities at him. Georgopoulos was initially some six feet away, but then lunged at Tanabe, coming within four inches of his face. At that point, two coworkers stepped in, facing Georgopoulos and keeping him from Tanabe. Then, Tanabe made a comment about Georgopoulos's breath, at which point Georgopoulos lunged around the coworkers and rammed his chest into the left side of Tanabe's chest, all the while continuing to yell obscenities. Tanabe called 911 from his cell phone.

Appellant's appendix contains a copy of San Francisco Police Report no. 11094676—the report number on Tanabe's exhibit quoted above—which included this detailed narrative:

"On the above listed date and time, Officer Vallarino #1709 and I, in full police uniform and driving a marked police vehicle, responded to 505 7th St. on a report of a battery of a parking control officer (PCO) by a PCO supervisor. Dispatch advised that the suspect had fled in his personal vehicle prior to our response.

"Upon arrival, I was met by (R/V) Brian Tanabe, who was standing in front of the Department of Parking and Traffic located at 505 7th St. Tanabe reported that after returning from the San Francisco City Attorney's office regarding a deposition against this same PCO supervisor, identified as (S1) Elias Georgopoulos, he was confronted outside 505 7th St. by him. As he was exiting the building, Tanabe reported that Georgopoulos was standing in front of the 7th St. exit/entrance. Tanabe knew that Georgopoulos was there to pick up his wife, who is also an employee of the DPT. As Tanabe passed Georgopoulos, Georgopoulos stated, 'You punk ass mother-fucker, stop snickering.' Tanabe turned and said in reply, 'What did you say, are you talking to me?' Georgopoulos then came right up to Tanabe's face and began saying 'Get out of my face, get out of my face.' Tanabe said that he did not react and allowed two coworkers to intervene and try to separate them. As Georgopoulos was being restrained, Tanabe said he was able to get around the two coworkers and hit Tanabe once in the chest before the coworkers were able to restrain him again. Tanabe then stated Georgopoulos's wife exited their vehicle and yelled to Georgopoulos 'Come on, let's get out of here.' Tanabe said that Georgopoulos got into his car and fled EB Bryant St. Tanabe stated he recognized Georgopoulos's vehicle from prior incidents. Tanabe described the vehicle as a blue, Toyota [C]orolla with paper license plates on the rear.

"Tanabe refused medical services several times, stating that he was not hurt but wanted a report. Tanabe told me that he has had several problems with the supervisor dating back to 08/24/2004. Tanabe stated that from 2004 to tonight's date, there have been 5 incidents that involved some kind of violence or threats of violence between

Georgopoulos and the reportee. Tanabe was able to show paperwork of prior incidents and the paperwork he received from the City Attorney's office.

"Tanabe was provided with a reportee-follow-up form, victim of violent crime form and a Marsay's Rights form."[1]

Consistent with his Request, Tanabe testified at the hearing that he had been the target of Georgopoulos's threats and harassment since 2004. This included testimony that following one threat, Tanabe went to the assistant director of SFMTA for help. Nothing changed, however, and Tanabe continued to fear for his and his family's safety, to the point that he moved his family to a new home, to shield them from Georgopoulos's violent behavior.

Tanabe also testified that on October 10, 2007, Georgopoulos confronted him in the office kitchen. Georgopoulos was irate and, in a hostile and threatening manner, accused Tanabe of calling him an obscene name to another coworker. Georgopoulos told Tanabe to watch his back " 'or else' and, as he was backing away [he] pointed his finger at Tanabe and said 'I'll get you.' " Nichel, another coworker, witnessed the incident and confirmed Tanabe's account, and also interpreted Georgopoulos's behavior as threatening and hostile.

In addition to the evidence about March 7 and Tanabe's testimony about prior history, there was also evidence of prior history at the SFMTA, the essence of which was that Georgopoulos created an atmosphere of fear and trepidation among the workers there. For example:

Pubill, a supervisor at SFMTA, described a "pattern of [Georgopoulos's] unpredictable violent behavior." As to specifics, Pubill described how in May 2008 Georgopoulos had bragged that he "pepper sprayed this man, and then he waited for the man and he didn't even flinch, and he cold cocked him in the jaw. He breaks jaws and he

[1] Tanabe's brief states that this police report, though submitted by appellant in his appellant's appendix, was not before the trial court during the hearing. We question the accuracy of this statement, as counsel was not representing Tanabe at the hearing and, as noted above, some unidentified papers were presented to Judge Chaitin.

breaks wrists." In Pubill's words: "[Georgopoulos] likes to bust heads and break jaws and he's bragging about it." The result, said Pubill, is that "[n]ow I'm scared of him."

Tjon testified to an incident in 2005, which arose after Tjon had issued a parking citation to one of Georgopoulos's friends. Georgopoulos told Tjon to void the citation. Tjon refused. Georgopoulos then threatened him in front of other coworkers, saying, "[y]ou better be careful of who I am." Tjon said that during his ten years at SFMTA, Georgopoulos "constantly . . . harassed me in the work environment. Very horrible."

Following the testimony from Tanabe's witnesses, Judge Chaitin asked Georgopoulos's counsel what his client has "to say about Mr. Tanabe's allegations." Counsel replied, "First of all, your Honor, our position is there's no clear and convincing evidence—." Judge Chaitin quickly interrupted: "I disagree with that."

With that, counsel put Georgopoulos on the stand, whose testimony covered three pages as to his version of what occurred on the evening of March 7. The essence of Georgopoulos's testimony was that Tanabe attempted to provoke him, by laughing at him and chuckling as Georgopoulos went to the restroom. And, Georgopoulos continued, "When I had washed my hands and came back out, he did it again. Chuckled at me, and then he muttered bitch. He was trying to provoke me. He's been trying to provoke me since December 5th when I wrote Mr. Brian Tanabe up for insubordination. [¶] Ever since that time, he has referred to me as—my call sign is 3 Paul 140. That's for supervisors/sergeants. And what he does—or what he was referring to me as 3 Paul asshole to different employees who came up to me. . . ."

Then, Georgopoulos claimed, Tanabe exited the locker room, again chuckling and laughing. As Tanabe approached, Georgopoulos "turned and . . . said what are you laughing at, he turns to me and he says, you talking to me? You talking to me, bitch? [¶] So he proceeded to come back to where I was standing, got in my face, he's telling me my breath stinks. He says your breath stinks. Then he starts to yell you want to go? You want to go? [¶] . . . [¶] I didn't want to continue with this guy. This guy's threatening me and getting in my face, so I decided to get in the Corolla and we left."

And Georgopoulos concluded: "But at no point, your Honor, did I push him, threaten him. [¶] Mr. Tanabe has, since December of 2005, he's constantly tried to provoke me. If I'm in the area or walking by him, he begins to chuckle and laugh."

This was followed by brief testimony from Monica Georgopoulos, all of 14 lines long, after which Judge Chaitin had this exchange with Georgopoulos's counsel:

"THE COURT: All right. So any other witnesses?

"MR. QUADRA: No, your Honor. We did submit declarations of the witnesses.

"THE COURT: First of all, I don't even think I have declarations. But I can't accept them anyhow because they're hearsay.

"MR. QUADRA: I understand, you Honor. We were trying to get the witnesses here. They were working and unable to do so. But both of them are identified as witnesses by Mr. Tanabe.

"THE COURT: That doesn't help me out. Thank you."

Judge Chaitin then turned to Tanabe and asked, "Do you want to ask either of them questions? You don't have to. I'm just giving you the opportunity, if you want to." Tanabe replied, "No. I don't think so."

Judge Chaitin then told Tanabe that he has "the last word. You and your witnesses have the last word, if you want to state anything. [¶] You heard what he had to say and his fiancé[e] had to say about the event. [¶] Do you have anything you want to say to that?"

Following brief testimony by Tanabe about an incident involving the claimed misuse of a placard, the hearing ended with these five pages of colloquy:

"THE COURT: Did you want to say something, Mr. Tjon? You had your hand up.

"MR. TJON: Yes. This incident that happened between Mr. Tanabe and Miss Georgopoulos was because of that subpoena that we received. The deposition that we had to give to the city attorney.

"THE COURT: I understand.

"MR. TJON: And my appointment was after his. He went at 12:00 o'clock. I went at 3:00 o'clock. Mr. Tanabe didn't want to say anything because Mr. Georgopoulos was in front of us.

"THE COURT: I understand. Did you testify?

"MR. TJON: Yes, for three hours, 15 minutes. And mine ended at 6:15 p.m. [¶] That was the same evening that Miss Georgopoulos decided to come to our workplace and this incident happened.

"THE COURT: Did you have an incident with him?

"MR. TJON: No.

"THE COURT: Okay.

"MR. TJON: I left. I missed the entire situation saying the reason why he acted how he acted was because of the subpoena I gave for three hours and 15 minutes.

"THE COURT: I know. I have this information. It's in the paperwork. [¶] Anything else then? [¶] So I'm going to ask these witnesses: Do you all know Mr. Tanabe?

"MR. NICHEL: Yes.

"MS. PUBILL: Yes.

"MR. TJON: Yes.

"THE COURT: For how many years do you know him?

"MR. NICHEL: I've been with the city and county for 18 years. I have known Officer Tanabe for 18 years.

"THE COURT: And you, Miss Pubill?

"MS. PUBILL: We were both P.C.O.'s together. I started in '92. I'm not sure when you started, Brian. And then, I became a supervisor.

"THE COURT: You, sir?

"MR. TJON: I've known him for 10 years.

"THE COURT: So what is his reputation for violence?

"MR. NICHEL: He has none.

"MISS PUBILL: He has none.

"MR. TJON: The reason why we're here is to show the court, to show you that Mr. Georgopoulos is very good at portraying himself to be a victim and that we are all aggressors. When in fact, we are his coworkers. Because he's now a supervisor, he cannot elect to target us or harass us.

"THE COURT: But I'm asking you about Mr. Tanabe's reputation.

"MR. TJON: He's an excellent employee. He's an excellent friend.

"THE COURT [to Georgopoulos's counsel]: Do you have any questions you want to ask on what I just asked them?

"MR. QUADRA: You're his friends, so you came here to support him. But you weren't at the incident, right?

"MR. TJON: No.

"MR. QUADRA: Thank you.

"THE COURT: Anything else?

"MR. QUADRA: If you want us to respond to the placard stuff, we have a statement that was filed.

"THE COURT: No. That's not before me. [¶] . . . [¶]

"MR. QUADRA: I'm done.

"THE COURT: You have the last word, sir, because you're the original moving party.

"MR. TANABE: Since I've been having run-ins with him since 2004, at the very first one, then we moved because of the fact I didn't want him to know where we lived.

"THE COURT: You and your family moved?

"MR. TANABE: Yes. We moved because of the fact of the incident started in 2004, which went to the assistant directors. And they said they would take care of it. [¶] And from then on, everything was we'll take care of it, we'll take care of it. And now, this is the part where—I'm getting too old for this.

"THE COURT: [to Georgopoulos's counsel]: Is there anything you must add? If so, then I'll have to let him add—

"MR. QUADRA: No, your Honor.

"THE COURT: Because we have the cross complaint but it's the same incident.

"MR. QUADRA: Well, it relates to the fact that since he was disciplined in 2005, Mr. Tanabe has engaged in work-related issues. [¶] . . . [¶] It's a concern, your Honor, that this is just another form of retaliation for the work discipline. [¶] For example, these gentlemen and the lady are actually witnesses in a civil case that they weren't even at, relating to an assault that occurred against Mr. Georgopoulos on the job where he defended himself.

"THE COURT: What I'm saying is the incident—your client's paperwork really, to tell you the truth, doesn't satisfy the statute in terms of threats or harassment.

"MR. QUADRA: Yeah.

"THE COURT: But I'm just asking you if you have anything else you want to say in terms of argument?

"MR. QUADRA: Only that—

"THE COURT: Since you were a cross-complainant.

"MR. QUADRA: —this latest request for a TRO and restraining order against Mr. Georgopoulos is a pattern and practice of basically dissatisfied employees where he's the supervisor.

"THE COURT: All right. Thank you.

"So the court is going to deny Mr. Georgopoulos. The court will deny his request for a restraining order. The court is going to grant Mr. Tanabe's request for a restraining order. How many years do you want that for, sir?

"MR. TANABE: As long as we can have it.

"THE COURT: Three. Now, I will grant the 50 yards away. Do you ever come—do you still work at the same location?

"MR. TANABE: Yes. I work there.

"THE COURT: So then, it would be two yards away.

"MR. TANABE: Okay.

"THE COURT: So it's 50 yards away from you, your vehicle, your workplace, your home. Except at the workplace itself, it's two yards away.

"MR. TANABE: Okay.

"THE COURT: Okay. And I will grant it as relating to Pandora, Yoshi—and is it Samuel?

"MR. TANABE: Yes.

"THE COURT: Those are your children and your wife who live with you?

"MR. TANABE: Yes.

"THE COURT: All right. We'll prepare the order."

The restraining order was entered on March 23, and Georgopoulos filed a timely notice of appeal.

DISCUSSION

Georgopoulos represents himself on appeal, and has filed a brief that begins with six pages of factual background. This is followed by 15 pages of legal argument which sets forth three arguments, the first and last of which have subparts. The three arguments are as follows: (1) there was no evidence of unlawful violence; (2) there was no credible threat of violence; and (3) there was no knowing and willful course of harassing conduct causing substantial emotional distress. None of the arguments has merit—indeed, we could consider them waived.

Georgopoulos's Brief Ignores the Rules of Appellate Procedure

The way Georgopoulos sets out the facts in his brief is to tell the story based on his version of the facts. Reading Georgopoulos's recitation of facts, not to mention the arguments premised on those facts, a reader would not even know that there was another side to the story—let alone the side believed by Judge Chaitin. This is most improper.

California Rules of Court, rule 8.204(a)(2)(C) provides that an appellant's opening brief shall "[p]rovide a summary of the significant facts. . . ." And the leading California appellate practice guide instructs about this: "Before addressing the legal issues, your brief should accurately and fairly state the critical facts (including the evidence), free of bias; and likewise as to the applicable law. [Citation.] [¶] Misstatements, misrepresentations and/or material omissions of the relevant facts or law can instantly 'undo' an otherwise effective brief, waiving issues and arguments; it will certainly cast

doubt on your credibility, may draw sanctions [citation], and may well cause you to lose the case!" (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2011) ¶ 9:27, p. 9-8, italics omitted.) Georgopoulos's brief ignores such instruction. And more.

" 'It is well established that a reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact.' [Citations.] Defendants' contention herein 'requires defendants to demonstrate that there is *no* substantial evidence to support the challenged findings.' [Citations.] A recitation of only defendants' evidence is not the 'demonstration' contemplated under the above rule. [Citation.] Accordingly, if, as defendants here contend, 'some particular issue of fact is not sustained, they are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed to be waived.' [Citations.]" (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; accord, *In re Marriage of Fink* (1979) 25 Cal.3d 877, 887.)

What Georgopoulos attempts here is merely to reargue the "facts" as he would have them, an argumentative presentation that not only violates the rules noted above, but also disregards the admonition that he is not to "merely reassert [his] position at . . . trial." (*Conderback, Inc. v. Standard Oil Co.* (1966) 239 Cal.App.2d 664, 687; accord, *Albaugh v. Mt. Shasta Power Corp.* (1937) 9 Cal.2d 751, 773.) In sum, Georgopoulos's brief manifests a treatment of the record that disregards the most fundamental rules of appellate review. (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal § 365, pp. 421-423, and § 368, pp. 425-426.) As Justice Mosk well put it, such "factual presentation is but an attempt to reargue on appeal those factual issues decided adversely to it at the trial level, contrary to established precepts of appellate review. As such, it is doomed to fail." (*Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 398-399.) And fail it does, as there is substantial evidence supporting Judge Chaitin's ruling here, as shown in detail above.

The Standard of Review

"The appropriate test on appeal is whether the findings (express and implied) that support the trial court's entry of the restraining order are justified by substantial evidence in the record. (*Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1137-1138 [injunctions under § 527.6 are reviewed to determine whether factual findings are supported by substantial evidence; trial court's determination of controverted facts will not be disturbed on appeal.)]" (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188.)

The substantial evidence rule applies without regard to the standard of proof required at trial. Put otherwise, the standard of review remains substantial evidence even if the standard below is "clear and convincing" evidence. (See *Crail v. Blakely* (1973) 8 Cal.3d 744, 750; *In re Marriage of Ruelas* (2007) 154 Cal.App.4th 339, 345.) As one Court of Appeal put it: " 'Thus, on appeal from a judgment required to be based upon clear and convincing evidence, "the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong." . . .' 'We have no power to judge the effect or value of the evidence, to weigh the evidence [or] to consider the credibility of witnesses' . . . ." (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.)

Schild v. Rubin (1991) 232 Cal.App.3d 755, 762 described the principle in a section 527.6 case: "In assessing whether substantial evidence supports the requisite elements of willful harassment, as defined in Code of Civil Procedure section 527.6, we review the evidence before the trial court in accordance with the customary rules of appellate review. We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is supported by substantial evidence which is reasonable, credible and of solid value. (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925; [citations]."

There Was Substantial Evidence

As quoted above, "harassment" in section 527.6 is defined to include "unlawful violence"; and "unlawful violence" is any assault or battery. (527.6, subds. (b)(3) & (7).) And there was evidence of a battery here, an intentional, unlawful, and harmful contact by one person with another. (*Delia S. v. Torres* (1982) 134 Cal.App.3d 471, 480, disapproved on other ground in *Christensen v. Superior Court* (1991) 54 Cal.3d 868, 906, fn. 28.) As described in *Ashcraft v. King* (1991) 228 Cal.App.3d 604, 611, "A harmful contact, intentionally done is the essence of a battery. (See 5 Witkin, Summary of Cal. Law ([10th ed. 2005]) Torts, § [383], p. [599].) A contact is 'unlawful' if it is unconsented to. (*Estrada v. Orwitz* (1946) 75 Cal.App.2d 54, 57.)" Such was evidenced here, when Georgopoulos smashed his chest into Tanabe.

There was also evidence of a credible threat of violence which, as quoted above, requires "a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety or his or her immediate family, and that serves no legitimate purpose." (§ 527.6, subd. (b)(2).)

Arguing to the contrary, Georgopoulos's brief matter of factly says that "While there is evidence in the record of a strained work place relationship between Mr. Tanabe and Mr. Georgopoulos, it is not enough to rise to the level of a credible threat of violence. The record merely evidences an employment dispute between the parties and a pattern of a disgruntled employee retaliating against his supervisor."

We read the record differently. It was more than a "strained work place relationship"—much more. It involved various incidents that, according to Tanabe, went back to 2004. As Pubill put it, Georgopoulos exhibits a "pattern of . . . unpredictable violent behavior," the most recent of which caused Tanabe to file the Request here. Beyond that, there was evidence indicating that Georgopoulos bragged about inflicting physical violence on others. In short, there was evidence that Georgopoulos deliberately generated a reputation for himself as a violent and threatening person. When he threatened and attacked Tanabe, Tanabe reasonably feared for his and his family's safety.

There is substantial evidence that Georgopoulos's conduct constituted a credible threat as defined by the statute. (§ 527.6, subd. (b)(2).)

Finally, as to Georgopoulos's argument that there was no evidence of emotional distress, the rule is that neither (a) direct testimony by the petitioner of emotional distress, nor (b) specific findings by the court of the existence of the statutory elements of harassment are a prerequisite to the issuance of an injunction under section 527.6. (*Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1110.)

Regardless, there was such evidence here, beginning with Tanabe's testimony that he moved his family as a result of Georgopoulos's threatening behavior. Tanabe also testified about Georgopoulos blocking his exit from the workplace kitchen in 2007 and threatening, "I'll get you," and about Georgopoulos's menacing instruction to "watch [his] back" or "get [his] dues." Indeed, March 7 began with Tanabe leaving the deposition because of fear of retaliation. The holding in *Ensworth* is apt: while the "record contains no direct oral testimony of [Tanabe's] emotional distress caused by the harassment. . . . the record contains sufficient evidence of [Georgopoulos's] harassment of [Tanabe] to allow the trial court to draw the conclusion that [Tanabe] indeed suffered substantial emotional distress." (*Id.* at pp. 1110-1111.)

Georgopoulos's Miscellaneous Arguments Have No Merit

Georgopoulos argues that Judge Chaitin refused to admit declarations, and that at least she should "have turned [her] attention to the declarations, which had circumstantial guarantees of trustworthiness." Putting aside the unsupported claim of "trustworthiness," the complete answer to Georgopoulos's argument is found in *Malatka v. Helm* (2010) 188 Cal.App.4th 1074, 1086, where the Court of Appeal rejected a similar argument by a losing defendant in a section 527.6 case: "In order to obtain appellate review of a ruling excluding evidence, its proponent must have made known to the court '[t]he substance, purpose, and relevance of the excluded evidence . . . by the questions asked, an offer of proof, or by any other means.' (Evid. Code, § 354, subd. (a).) In this case, defendant neither objected at the hearing . . . to the court's exclusion of this evidence or offered to prove the contents of the declarations at that hearing. . . . We conclude that defendant, by

failing to make a timely objection or offer of proof, has forfeited her claim that the trial court erred by failing to consider declarations attached to her opposition." (Fn. omitted.) Like the appellant in *Malatka*, Georgopoulos made no offer of proof.

But even if the failure to review the declarations had been erroneous, it would not have been prejudicial. We have reviewed the declarations which at best supported—however weakly—Georgopoulos's version of what happened on March 7. That version was testified to by Georgopoulos, that testimony was rejected by Judge Chaitin. In Evidence Code terms, Georgopoulos has not shown a miscarriage of justice. (Evid. Code, § 354.)

Russell v. Douvan (2003) 112 Cal.App.4th 399 and *Leydon v. Alexander* (1989) 212 Cal.App.3d 1, the two cases on which Georgopoulos primarily relies, are easily distinguishable. *Russell* involved a single incident involving two attorneys, one of whom followed the other into an elevator after a court appearance and grabbed the other's arm. There was no indication of any prior problems between them—indeed, no evidence of even any prior relationship. And they did not work in the same workplace. *Leydon* also involved a single incident, where a discharged city employee came to the office where he formerly worked and verbally abused his former supervisor and other employees.

The situation here is a far cry. To begin with, Tanabe and Georgopoulos are "coworkers," and necessarily often in the same vicinity. And there is ample evidence that Georgopoulos has manifested—and repeated—threatening conduct on multiple occasions.

Tanabe Is Entitled to Attorney Fees

Tanabe is now represented by counsel on appeal. He retained counsel, he asserts, "only when he received the Notice of Appeal in this case." Tanabe's brief ends with a request for "attorney fees and costs," a request based on section 527.6, subdivision (r), which provides that "the prevailing party in any action brought under this section may be awarded costs and attorney's fees, if any."

Interestingly, Georgopoulos's one and one-half page reply brief addresses almost exclusively Tanabe's request for fees. Almost nothing—and nothing of substance—is

said about the claimed merits of Georgopoulos's appeal, perhaps a telling omission. As to the attorney fee issue, Georgopoulos says this:

"I appealed the order from the court below because I believe that the court's order was wrong—I was the victim in an exchange that occurred between myself and Mr. Tanabe, not the aggressor. At the hearing on the restraining order, I had several declarations from independent witnesses that confirmed what I attempted to explain to the court at the hearing. . . . The judge who heard the matter below refused to review and consider the declarations we had obtained and the witnesses were not available to testify in person on the specific day the hearing occurred.

"I had retained a lawyer to represent me at the proceedings below[.] If I understand Mr. Tanabe's Respondent's Brief correctly, my lawyer failed to make certain objections, and failed to offer proof to the judge of the identity of my witnesses and the content of their declarations. If those declarations—which had been filed before the hearing—had been read by the judge, I am sure that the outcome of the hearing would have been different.

"I have made my arguments in favor of reversal in my opening brief—I won't repeat them here. I still request that the trial court's order be reversed. I also ask that even if this Court now agrees with Tanabe, and decides that my lawyer failed to do what needed to be done with regard to requesting that the lower court consider the declarations from witnesses to the incident and other matters, that the Court refuse Mr. Tanabe's request that I pay his attorneys fees on appeal. I appealed the order by the lower court because I felt that it was unjust. I was the victim in this incident, and apparently the victim of my attorney's failure to do what he was supposed to do with regard to evidence or requesting another hearing date at which my witnesses could testify on person. I do not believe it would be just if I were made to pay three times over for something I never deserved in the first instance.

"I am asking that this court reverse the decision below. If the court will not do that, then I am asking, at the very least, that the court does not order me to pay Mr. Tanabe's attorneys fees."

We order otherwise.

Whether to award attorney fees under section 527.6 is a matter of discretion. (*Krug v. Maschmeier* (2009) 172 Cal.App.4th 796, 800.) We exercise that discretion to award Tanabe such fees here, which we can do on appeal. (See *Byers v. Cathcart* (1997) 57 Cal.App.4th 805, 813). Like plaintiff Byers, Tanabe is the prevailing party on appeal—indeed, he was the prevailing party below, when Judge Chaitin decided a fact-based case in Tanabe's favor, rejecting Georgopoulos's version of the incident.

Georgopoulos filed an appeal from that order, which, of course, he has a right to do. But in pursuing that appeal, Georgopoulos ignored the settled principles of appellate procedure. Beyond that, as we read Georgopoulos's reply brief, he essentially blames his attorney for his loss—not the facts in the case. As Georgopoulos puts it, he is "the victim in this incident, and apparently the victim of my attorney's failure to do what he was supposed to do with regard to evidence or requesting another hearing date at which my witnesses could testify on person." Or as Georgopoulos puts it at another point, had Judge Chaitin read the declarations, he is "sure that the outcome of the hearing would have been different." Where such certainty comes from is a mystery to us.

The record reveals what it reveals. And Judge Chaitin's order manifests her conclusion that Georgopoulos has engaged in conduct that causes fear and trepidation—a conclusion supported by substantial evidence. Such conduct is not to be condoned. Or tolerated. Perhaps having to pay Tanabe's attorney fee will give Georgopoulos pause.

DISPOSITION

The restraining order to stop harassment is affirmed, and the matter is remanded for the trial court to determine the reasonable amount of attorney fees to which Tanabe is entitled. Tanabe shall recover his costs on appeal.

_____
Richman, J.

We concur:

_____
Kline, P.J.

_____
Lambden, J.